

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, et al. ex rel. URI
BASSAN,

Plaintiffs,

v.

OMNICARE, INC.,

Defendant.

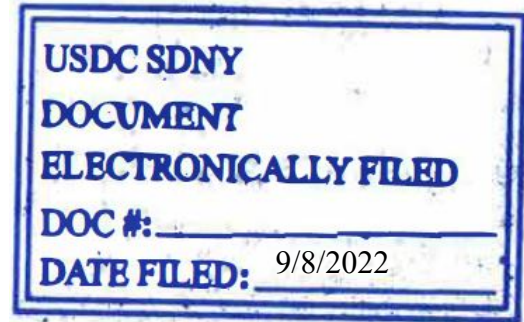
UNITED STATES OF AMERICA,

Plaintiff,

v.

OMNICARE, INC. and CVS HEALTH CORP.,

Defendants.



No. 1:15-cv-04179

SCHEDULING ORDER

McMahon, J.:

After a long discovery conference, begun over the phone on September 6 and continued in person on September 7, I offer the parties the following guidance regarding discovery.

1. Discovery relating to the OMNI DX and OASIS systems:

The parties have advised the court that they have agreed to parameters for the dispensing data to be produced from the OMNI DX and OASIS systems. The data to be produced from the OMNI DX system must be produced on a rolling basis, with production to be complete no later than October 28. The data to be produced from the OASIS system must also be produced on a rolling basis, with production to be complete no later than November 23.

The statistician expert must complete the process of drawing the sample from the OMNI data by November 18 and must complete the process of drawing the sample from the OASIS data by December 16.

Supporting documentation reflecting prescriber authorizations for the identified sample dispensations from the OMNI DX system shall be produced on a rolling basis and must be complete no later than December 2. Supporting documentation reflecting prescriber authorizations for the identified sample dispensations from the OASIS system shall proceed on a rolling basis and must be complete by January 6, 2023.

2. Fed. R. Civ. P. 30(b)(6) Depositions:

The parties must identify 30(b)(6) witnesses by October 7. 30(b)(6) depositions must be completed by November 18.

The Government must identify the equivalent of 30(b)(6) witnesses representing the agencies designated by Defendants by October 7. Those depositions must be completed by December 9.

3. Interrogatories

The court is advised that there are only a few interrogatory issues outstanding. Any disputes not resolved by September 14 concerning outstanding interrogatories must be taken to Magistrate Judge Figueredo immediately for resolution. All responses to outstanding interrogatories must be completed by October 7. Judge Figueredo must give permission before additional interrogatories may be served. The parties have had plenty of time to exchange such requests.

4. Experts

The Government must designate its experts no later than October 14. Expert report from the Government's statistical expert must be produced no later than January 6, 2023. Expert report from the Government's pharmaceutical expert must be produced no later than January 31, 2023. The depositions of those experts must be taken within 30 days after production of their reports. All other expert reports (geriatrician, pharmacy operations) must be produced by December 14, with depositions of those expert taken within 30 days after the production of their reports.

Defendants must designate their experts no later than November 11. The expert report from the Defendants' statistical expert must be produced no later than February 3, 2023. The expert report from Defendants' pharmaceutical expert must be produced no later than February 28. The depositions of those experts must be taken within 30 days after production of their reports. All other expert reports must be produced by January 20, 2023, with depositions of those experts to be taken within 30 days after production of their reports.

Rebuttal reports from experts are due ten days after the deposition of the opposing expert. There will not be any rebuttal depositions.

5. Outstanding Document Requests

Defendants will produce “communications” responsive to the Government’s outstanding document requests and electronically stored information relating to the operations, practices and procedures of a subset of Omnicare’s pharmacies on a rolling basis, to be completed no later than January 20, 2023. They will produce responses to all other Government discovery requests on a rolling basis beginning no later than October 7 and ending no later than December 5. The Government is limited to 30 ESI pharmacy custodians.

The Government must produce responses to the Defendants’ outstanding discovery requests on the same schedule – October 5 to December 7.

ALL DISPUTES RELATING TO OUTSTANDING DISCOVERY REQUESTS, INCLUDING BUT NOT LIMITED TO DISAGREEMENTS OVER SEARCH TERMS, MUST BE RESOLVED BY THE PARTIES BY SEPTEMBER 14 OR SUBMITTED IN WRITING TO MAGISTRATE JUDGE FIGUERO DO BY SEPTEMBER 20.

6. Depositions Other than 30(b)(6) and Expert Depositions

The parties are limited to 20 depositions aside from expert and 30(b)(6) depositions. They should begin as soon as possible and must be completed by April 30, 2023.

7. Additional Discovery Not Contemplated By This Order

If any party believes there is a need for discovery aside from that contemplated by this order, that party should make a highly specific request for permission to take the same to Magistrate Judge Figuero do. She has been advised to grant such requests sparingly and only on a showing of true need.

Judge Figuero do is likely to order the parties to attend a monthly conference to resolve discovery disputes. The parties should be prepared to tee up issues in letters sent prior to any such conference, so that all outstanding issues can be discussed and resolved at the next such conference. She is free to alter “internal” deadlines but the only way that she can alter the discovery deadline is if the parties consent to refer the case to her for all purposes.

8. Discovery Deadline

The absolute fixed deadline for the conclusion of all discovery, fact and expert, is June 30, 2023. The extra three months gives the parties some wiggle room in case disputes cause delays (which I sincerely hope will not happen). They are not intended to prolong an already overly-long discovery process. This date is not going to be extended, so the parties should find ways to devote sufficient resources to this matter so that you meet the deadline. I remind you that this case was filed in 2015; the Government conducted an investigation lasting four years before deciding to take over prosecution of the case, during which time it received a great deal of relevant information; the motion to dismiss was decided in March 2021, a year and a half ago; and no effort

was made to involve the court in resolving disputes until August 2022. The year and a half since the decision on the motion to dismiss should be counted against the time available for discovery.

I will set a schedule for the inevitable summary judgment motions early next year.

The clerk of the court is directed to close the open motions at Docket Numbers 113 and 119.

Dated: September 8, 2022

A handwritten signature in black ink, appearing to read "Peter M. Hall", is written above a horizontal line.

U.S.D.J.

BY ECF TO ALL COUNSEL